

POWERS OF ATTORNEY

Factsheet



What is a Power of Attorney?

A Power of Attorney is a document that permits another person to manage your affairs. There are different types of Power of Attorney which are suitable for different circumstances.

Why might you need one?

A Power of Attorney can be very useful if, for whatever reason, you need someone else to do something important that you would normally do yourself. If there comes a time when you become incapable of looking after your own financial affairs or of making welfare decisions, the person you have chosen to act as your Attorney will be able to do this for you. This can help avoid a difficult situation where, for example, bills go unpaid.

By using a Power of Attorney, you decide who your Attorney is. You therefore have the peace of mind that your financial affairs and/or welfare will be in the hands of someone you trust. If you become mentally incapable of managing your own affairs and you do not have a Power of Attorney, a Court will appoint a Deputy to look after your affairs, and this may not be someone you would have chosen yourself. Furthermore, you will have to pay the Court for appointing a Deputy and this is much more expensive than appointing your own Attorney, and is a much more difficult and time-consuming process.

Different types of Power of Attorney

1. Ordinary Power of Attorney (OPA)

An OPA is appropriate for when you only require short-term help to manage your financial affairs. For example, you may be going abroad for a long time and want someone to pay your bills whilst you are away. An OPA allows you to appoint a person of your choosing (your 'Attorney') who will then be able to access your bank accounts to make sure your bills are paid. -

An OPA is generally used as a short-term temporary measure as the document automatically comes to an end at the moment that you lose the mental capacity to manage your own affairs. Furthermore, they only relate to financial affairs and do not allow your Attorney to make any decisions with regards to your health or welfare.

2. Lasting Power of Attorney (LPA)

An LPA acts in much the same way as an OPA, with the crucial difference being that it can still be used in the event you become mentally incapable of managing your own affairs. An LPA can only be used once it has been registered with the Office of the Public Guardian.

There are two different types of LPA:

A. Property and Financial Affairs LPA

This LPA authorises your Attorney to manage anything that relates to your property and financial matters. So, for example, your Attorney can sell your home, make payments from your bank account, receive benefits on your behalf, buy and sell investments and pay your bills and expenses.

B. Personal Health and Welfare LPA

This LPA authorises your Attorney to make decisions that affect your personal health and welfare to the extent that you are unable to make these decisions yourself. For example, they can decide if you should move to a nursing home, who takes care of you, what medical treatment you can and cannot have.

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How can Coles Miller help?

3. Enduring Power of Attorney (EPA)

An EPA is the forerunner of the LPA and combines elements of an OPA and an LPA for property and financial affairs. However, whilst an existing EPA remains valid, it has not been possible to create a new EPA since 30 September 2007. An EPA can be used in much the same way as an OPA whilst you remain mentally capable of managing your affairs. However, if you were to lose mental capacity, your Attorney would have to register the EPA with the Office of the Public Guardian before it could be used again. Like an OPA, an EPA only relates to financial affairs and does not allow your Attorney to make any decisions about your health and welfare.

Our team of legal experts can advise you on the most appropriate Power of Attorney for your particular circumstances, as well as drafting the Power of Attorney and taking all the necessary steps to ensure it is effective, normally for a competitive fixed fee.

Found this information useful and want to know your next steps?

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